

UNITED STATES
BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT
LOCAL RULES

EFFECTIVE MARCH 1, 2002



UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

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**LOCAL RULES
UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

8001-1. Statement of Election

An appellant's statement of election to have its appeal heard in the district court under 28 U.S.C. § 158(c)(1)(A) and Fed. R. Bankr. P. 8001(e) must be filed with the bankruptcy court. Any other party electing to have the appeal heard in the district court under 28 U.S.C. § 158(c)(1)(B) must file its statement of election with this court. A cross-appellant seeking to have its appeal and the appellant's appeal heard in the district court must file a separate statement of election in each appeal.

8005-1. Stay Pending Appeal

- (a) **Motion.** A motion for stay pending appeal under Fed. R. Bankr. P. 8005 must:
 - (1) state whether any party to the appeal opposes the relief sought; and
 - (2) state whether the motion was first presented to the bankruptcy court; if not, the motion must explain why it was not presented.
- (b) **Appendix.** The motion must be accompanied by an appendix containing the following:
 - (1) a copy of the bankruptcy court's order denying a motion for stay or a copy of the transcript of the bankruptcy court's hearing on the motion, unless the motion was not first presented to the bankruptcy court; and
 - (2) a copy of any paper filed in the bankruptcy court that is needed to decide the motion.
- (c) **Emergency Motion.** If the motion is an emergency motion, the moving party must also comply with Fed. R. Bankr. P. 8011(d) and 10th Cir. BAP L.R. 8011-2.

8006-1. Record and Issues on Appeal

- (a) **Copies of Items in Record.** Once a party has designated the record on appeal in accordance with Fed R. Bankr. P. 8006, the party should not provide a copy of the designated items to the bankruptcy court. The record must be brought before this court in the appendices required by Fed. R. Bankr. P. 8009(b) and 10th Cir. BAP L. R. 8009-1(b).
- (b) **Copy of Designation of Record and Statement of Issues.** A party who files a designation of record or statement of issues with the bankruptcy court must file a copy with this court within 10 days after the date of the notice that the appeal has been docketed with this court.

8007-1. Transmission of the Record

- (a) **Preliminary Transmission.** Promptly after a notice of appeal is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the following:
 - (1) the bankruptcy court docket entries in the case and the adversary proceeding, if applicable;
 - (2) the notice of appeal;
 - (3) any motion to extend time to file the notice of appeal and the order disposing of the motion;
 - (4) the bankruptcy court's judgment or order being appealed and any written findings and conclusions or opinion of the bankruptcy court; and
 - (5) any post-judgment motion regarding the appealed judgment or order and any order disposing of the motion.
- (b) **Supplemental Transmission.** After the preliminary transmission has been sent:
 - (1) if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the motion, any order disposing of the motion, and the related docket entries; and
 - (2) if any statement of election to have the appeal heard in the district court is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the statement of election.
- (c) **Facsimile or Electronic Transmission Preferred.** The bankruptcy court clerk should send the preliminary transmission and any supplemental transmission by facsimile or electronic transmission.
- (d) **Transmission of the Record.** Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bankr. P. 8007(b).

8008-1. Filing and Service

- (a) **"Mail" Defined.** As used in Fed. R. Bankr. P. 8008, the term "mail" includes:
 - (1) first-class mail;
 - (2) any other class of mail that is at least as expeditious as first-class mail; or
 - (3) dispatch to a third-party commercial carrier for delivery within 3 calendar days.
- (b) **Number of Copies.** A party must file an original and three copies of a brief or an appendix to a brief. A party may file only an original of any other paper.
- (c) **Manner of Service.** Service on a party should be by a manner at least as expeditious as the manner used to file the paper with this court.
- (d) **Facsimile Filing.** Any paper other than a brief or an appendix to a brief may be filed by facsimile. The facsimile is considered the original paper. The facsimile is filed on the date that it is received by this court. If the facsimile is received on a Saturday, Sunday, or

legal holiday, it is filed as of the next business day. A party should call the bankruptcy appellate panel clerk before sending a facsimile that exceeds 50 pages.

- (e) **Electronic Filing.** Any paper may be filed electronically or on electronic media only when authorized in advance by the bankruptcy appellate panel clerk.
- (f) **Electronic Service.** Service by electronic means may be made on a party who has consented to such service. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served. If a party has made service by electronic means, the proof of service required by Fed. R. Bankr. P. 8008(d) must state that the party being served consented to service by electronic means and must contain the e-mail address of the party being served. Parties who have consented to electronic service must immediately inform all other parties to the appeal of any change in e-mail address.

8009-1. Briefs and Appendix

- (a) **Appellant's Brief.** The appellant's brief must be filed within 45 days after the date of the notice that the appeal has been docketed with this court.
- (b) **Appendix.**
 - (1) **Form.** The appendix must be separate from the brief and must be firmly bound along the left margin. Papers in the appendix should be reproduced on 8½" x 11", white, opaque, unglazed paper, with printing on only one side of the page.
 - (2) **Cover.** The appendix must have a cover page containing the following:
 - (A) the case caption;
 - (B) the title "Appendix," with the name of the filing party; and
 - (C) counsel or a pro se party's name and address and, if available, telephone and facsimile number.
 - (3) **Table of Contents.** The appendix must be paginated and must include a table of contents.
 - (4) **Order of Papers.** The relevant bankruptcy court docket entries must be the first papers in the appendix. Copies of papers filed with the bankruptcy court should be arranged in chronological order according to the filed date, with any exhibit or transcript included as of the date of the hearing.
 - (5) **Transcripts.** The appendix must contain all transcripts, or portions of transcripts, necessary for the court's review.
 - (6) **Bankruptcy Court's File Stamp.** Copies of all papers included in the appendix must show the bankruptcy court's mechanical or digital file stamp, or equivalent

evidence of filing with the bankruptcy court.

- (7) **Multiple Parties.** If multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously-filed appendix and may adopt the items by reference.
- (8) **Exemptions.** If papers to be included in an appendix are not susceptible of copying, or are so voluminous that copying is excessively burdensome or costly, a party should file a motion to exempt the papers from the appendix and file them separately.
- (9) **Sealed Papers.** Copies of papers filed under seal with the bankruptcy court should be included in an addendum to the appendix, accompanied by a motion to place the papers under seal with this court.

8010-1. Form of Briefs

- (a) **Paper.** Paper must be 8½” x 11”, white, opaque and unglazed, with printing on only one side of the page, and briefs must be firmly bound along the left margin.
- (b) **Cover.** A cover must contain the following:
 - (1) the case caption;
 - (2) the title “Brief,” with the name of the filing party;
 - (3) counsel or a pro se party’s name and address and, if available, telephone and facsimile number; and
 - (4) a statement of whether oral argument is requested.
- (c) **Text.** Word processor or typewriter text must be no smaller than a 12-point font and, except for indented quoted material and footnotes, must be double-spaced. Each page must have 1” margins on all sides, with no text other than page numbers appearing within the margins.
- (d) **References to Appendix.** References to papers in an appendix must be to pages of the appendix (e.g., Appellant App. at 27, or Appellee Supp. App. at 14).
- (e) **Statement of Reasons for Oral Argument.** If oral argument is requested, a statement of the reasons why argument is necessary must follow the conclusion.
- (f) **Statement of Related Cases.** A party who knows of a related case pending before the United States Supreme Court or any United States Court of Appeals, District Court, or Bankruptcy Appellate Panel must include as the last page of its brief a statement listing the related case(s). A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal.
- (g) **Length of Brief.** The Statement of Reasons for Oral Argument and the Statement of

Related Cases are excluded from the page limits in Fed. R. Bankr. P. 8010(c).

- (h) **Length of Amicus Brief.** An amicus brief must not exceed 20 pages without leave of court.

8011-1. Motions

- (a) **Statement Regarding Opposition.** A motion must state whether any party to the appeal opposes the relief sought.
- (b) **Facsimile Number.** A motion must include the facsimile number of the person signing it, unless that person does not have a facsimile machine.
- (c) **Reply.** If a response to a motion is filed, the movant may file a reply to the response within 5 days after service of the response. The court will not consider any further response or reply without leave of court.

8011-2. Emergency Motions

- (a) **Notice.** Before filing an emergency motion, the movant must give the bankruptcy appellate panel clerk as much advance notice as possible. Emergency motions, appendices, and responses must be filed and served by the quickest method available.
- (b) **Facsimile Number.** An emergency motion must include the facsimile number of the person signing it and the facsimile number of all other parties to the appeal, unless a party does not have a facsimile machine.
- (c) **Appendix.** An appendix must be served and filed with the motion and must include a copy of the following:
 - (1) the notice of appeal;
 - (2) the judgment, order, or decree from which the appeal is taken; and
 - (3) any other paper filed with the bankruptcy court that is needed to decide the motion.

8012-1. Oral Argument

- (a) **Telephone or Video Conference.** A party may request, or the court may determine, that oral argument be conducted telephonically or by video conference.
- (b) **Change of Date or Place of Hearings.** After the date of the notice of oral argument, the date or place assigned for hearing will not be changed without leave of court.
- (c) **Failure to File Brief.** An appellee who has not filed a brief may not participate in oral

argument without leave of court.

8015-1. Motion for Rehearing

This court will consider only one motion for rehearing from any party to the appeal.

8016-1. Bankruptcy Appellate Panel Clerk Authorized to Act on Certain Motions

Subject to review by the court, the bankruptcy appellate panel clerk may act on any of the following motions:

- (a) To extend time to file a paper or perform an act required by these rules or Fed. R. Bankr. P. 8006, 8007, 8009, 8011, or 8014;
- (b) To supplement or correct a paper filed with this court;
- (c) To consolidate appeals;
- (d) To substitute parties;
- (e) To appear as amicus curiae;
- (f) To expedite or continue cases;
- (g) To substitute counsel, or to allow counsel who has entered an appearance to withdraw;
- (h) To voluntarily dismiss an appeal;
- (i) To exempt papers from an appendix under 10th Cir. BAP L.R. 8009-1(b)(8);
- (j) To place papers under seal under 10th Cir. BAP L.R. 8009-1(b)(9); and
- (k) Any other motion the court may authorize.

8016-2. Entry of an Order

An order is entered when it is noted on the docket.

8016-3. Mandate

- (a) **Mandate.** A certified copy of this court's order or judgment and a copy of any opinion constitutes the mandate.

- (b) **Issue Date.** This court's mandate must issue immediately after the time to file a motion for rehearing expires, unless the mandate is stayed under subsection (c) of this rule or the court shortens or enlarges the time.
- (c) **Stay of Mandate.** Unless this court orders otherwise, the mandate is stayed until the court resolves the following:
 - (1) a timely-filed motion for rehearing;
 - (2) a motion for stay of judgment under Fed. R. Bankr. P. 8017(b) that is filed before the mandate is issued; or
 - (3) a motion to stay the mandate that is filed before the mandate is issued.
- (d) **Issue After Stay.** If this court stays its mandate pending appeal, the mandate must issue immediately after this court files the mandate from the appellate court.

8018-1. Entry of Appearance and Admission to Practice

- (a) **Notice of Appearance.** An attorney who represents a party in an appeal, and who is not identified in the notice of appeal or a notice of substitution of attorney, should immediately file and serve a notice of appearance containing the attorney's name, address, telephone number, and facsimile number.
- (b) **Appearance.** Notwithstanding the previous subsection, an attorney who authorizes his or her name to appear on a paper filed with this court has entered an appearance. An attorney who has entered an appearance may not withdraw without leave of court.
- (c) **Admission.** An attorney is admitted to practice before this court if the attorney is:
 - (1) admitted to practice by and a member in good standing of the United States Court of Appeals for the Tenth Circuit;
 - (2) admitted to practice by and a member in good standing of a United States District Court within the Tenth Circuit; or
 - (3) admitted to practice by a United States Bankruptcy Court in the case or proceeding on appeal.
- (d) **Student Practice.** A law student may appear before this court after the following conditions are satisfied:
 - (1) **Qualifications of Student.** The student must:
 - (A) be enrolled and in good standing in a law school accredited by the American Bar Association, or a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;
 - (B) have completed the equivalent of 4 semesters of legal studies; and
 - (C) be familiar with the Federal Rules of Bankruptcy Procedure, the American Bar Association Code of Professional Responsibility, and the rules of this

court;

- (2) **Consent of Party.** The party must state that it consents to the law student's appearance on its behalf, and the statement must be filed with this court; and
- (3) **Supervising Attorney.** An attorney who is admitted to practice before this court must supervise the student. The supervising attorney must:
 - (A) assume personal professional responsibility for the quality of the student's work;
 - (B) guide and assist the student as necessary or appropriate under the circumstances;
 - (C) sign all papers filed with this court;
 - (D) appear with the student in any oral presentations before this court;
 - (E) supplement any written or oral statement made by the student to this court or other parties to the appeal if this court so requests; and
 - (F) file with this court a written certification that the student meets the qualifications of this rule and the attorney has agreed to supervise the student in accordance with this rule.

8018-2. Discipline

Any judge of this court may discipline attorneys and parties as provided in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and may refer a disciplinary matter to the appropriate authority.

8018-3. Statement of Interested Parties

- (a) **Statement.** All parties, other than governmental parties, must file a statement disclosing any interested party who is not listed in the notice of appeal. If there is none, a statement to that effect must be filed.
- (b) **Interested Party.** The term "interested party" includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal.
- (c) **Corporations.** When a corporation is a party to an appeal, the Statement of Interested Parties must identify any parent corporation and any publicly held corporation that owns 10% or more of its stock or state that there is no such corporation.
- (d) **Prior Attorneys.** The Statement of Interested Parties must include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance in this court.
- (e) **Generic Description.** An individual listing is not necessary if a large group of persons or

firms can be specified by a generic description.

- (f) **Time of Filing.** The Statement of Interested Parties must be filed within 10 days after the date of the notice that the appeal has been docketed with this court, or when a party files a motion with this court, whichever is earlier.
- (g) **Obligation to Amend.** A party who learns that an otherwise undisclosed party is an interested party must immediately file an amended statement.

8018-4. Diligent Prosecution of Appeals

- (a) **Reporting Changes.** Counsel or pro se parties must immediately file with this court a statement of any address, telephone number, or facsimile number changes.
- (b) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with these rules or the Federal Rules of Bankruptcy Procedure, the bankruptcy appellate panel clerk may, after notice and on order to show cause, enter an order dismissing the appeal.

8018-5. Courtroom Photography, Television and Radio Broadcasts

For the purposes of the September 1994 resolution of the Judicial Conference of the United States, which prohibits taking photographs in the courtroom or its environs in connection with any judicial proceedings, the environs of this court's courtrooms include the courtrooms utilized by this court, this court's clerk's office, and any hallways in the immediate vicinity of those courtrooms and office. Using radio, television, or other means for live or delayed broadcasting is forbidden in areas from which photography is excluded.

8018-6. Citation of this Court's Unpublished Decisions

- (a) **Not Precedent.** This court's unpublished decisions are not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.
- (b) **Limits on Use.** A party may refer to an unpublished decision of this court only if:
 - (1) the decision has persuasive value with respect to a material issue that has not been addressed in a published opinion;
 - (2) the decision would assist the court in its disposition; and
 - (3) the party attaches a copy of the decision to any paper that cites it.

8018-7. Certification of Questions of State Law

- (a) **Certification and Stay.** When state law permits, this court may certify a state law question to that state's highest court in accordance with that court's rules and may stay

the case to await the state court's decision.

- (b) **Motion.** Certification may be raised on motion of a party or on this court's own motion. A party seeking certification must file a separate motion no later than with its first brief.

8018-8. Case Involving Constitutional Question

- (a) **Written Notice Required.** Within 10 days after the date of the notice that the appeal has been docketed with this court, a party must file a written notice with this court if the party:
 - (1) questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity; or
 - (2) questions the constitutionality of a state statute in a proceeding in which the state's attorney general is not a party in an official capacity.
- (b) **Bankruptcy Appellate Panel Clerk Certification.** If a written notice is filed, the bankruptcy appellate panel clerk must certify that fact to the appropriate attorney general.
- (c) **Time Period to Appear.** An attorney general may appear in the appeal within 30 days after the date that the bankruptcy appellate panel clerk serves its certification.

8018-9. Supplemental Authority

- (a) **Letter.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument, but before this court's issuance of a decision, the party should promptly file a letter addressed to this court setting forth the citations to such authorities. The letter must not exceed two pages.
- (b) **Response.** Any response to the letter must be made by letter addressed to this court, must not exceed two pages, and must be filed and served within 5 days after service of the original letter.

8018-10. Calculation of Time

- (a) **Application of Fed. R. Bankr. P. 9006.** Unless otherwise specified, Fed. R. Bankr. P. 9006(a), (b), (c), (e), and (f) apply to appeals before this court.
- (b) **Legal Holiday.** "Legal holiday," as defined in Fed. R. Bankr. P. 9006(a), includes any day appointed as a holiday by the state in which the this court's clerk's office is located or the state of the district in which the matter originated.

8018-11. Applicable Rules

- (a) **Application of the Federal Rules of Bankruptcy Procedure.** Unless otherwise altered or suspended by these rules or by court order, Part VIII of the Federal Rules of Bankruptcy Procedure and all relevant Official Forms apply to proceedings in this court.
- (b) **Application of the Federal Rules of Appellate Procedure.** In cases in which Part VIII of the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular manner of practice, the court may order application of the Federal Rules of Appellate Procedure or the Tenth Circuit Rules.

8018-12. Citation and Effective Date of These Rules

- (a) **Citation.** These rules may be cited as follows: 10th Cir. BAP L.R. ____.
- (b) **Effective Date.** These rules are effective March 1, 2002.